

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 17

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte ABRAHAM COHEN

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Appeal No. 1999-1812  
Application No. 08/692,761

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ON BRIEF

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Before STAAB, JENNIFER D. BAHR, and LAZARUS, Administrative Patent Judges.

STAAB, Administrative Patent Judge.

*DECISION ON APPEAL*

This is a decision on an appeal from the examiner's refusal to allow claim 13 added by an amendment filed subsequent to the final rejection, and from the examiner's final rejection of claims 3-6, 8, 9 and 12, all of which

Appeal No. 1999-1812  
Application No. 08/692,761

depend from claim 13. No other claims are currently pending in the application.

Appellant's invention pertains to a cable hoist controller for use with multi-story scaffolding. An understanding of the invention can be derived from a reading of independent claim 13, which is reproduced in Appendix A to appellant's brief.

The single reference of record relied upon by the examiner as evidence of obviousness is:

Naito	3,231,240	Jan. 25, 1966
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Claims 3-6, 8, 9, 12 and 13 stand rejected under 35 U.S.C.

§ 103 as being unpatentable over Naito.

With reference to appellant's Figures 1 and 3, claim 13 calls for a cable hoist comprising a support plate 16, a driving sheave 24 rotatably mounted on the support plate, a prime mover 12 for rotatably moving the sheave, a cable 32 located within a cable-receiving groove of the sheave, a plurality of rollers 34 connected together by a plurality of linkage means 42 such that the rollers are disposed about the

Appeal No. 1999-1812  
Application No. 08/692,761

sheave in mechanical communication with the cable for holding the cable in the groove of the sheave, and an input roller 52 at one end of the plurality of linkage means. Of particular interest in the obviousness issue raised in this appeal is the requirement of claim 13 that the plurality of linkage means 42 comprises means for connection of each of said rollers to each other "in which at least one of said linkage means comprises means for selectably detachable removal thereof from a roller communicating therewith." According to claim 13, with the above arrangement "placement of said cable means between said sheave and said plurality of rollers is facilitated by removal of said at least one of said selectably detachably removable linkage means . . . ."

Turning to the examiner's § 103 rejection of the appealed claims, there appears to be no dispute that Naito's Figure 8 embodiment includes all the limitations of claim 13 except that Naito's links 8, 8A for connecting rollers 10, 23 together are not disclosed as including at least one link "for selectably detachable removal thereof from a roller communicating therewith," as now claimed. Nevertheless, the examiner has taken the position that it would have been

obvious to one of ordinary skill in the art to provide at least one selectably detachable link in Naito "because disassembly of parts is a well known feature for allowing replacement of parts of a machine, or insertion of a rope or cable in a hoist" (answer, page 5). In this regard, the examiner further posits on page 6 of the answer that

the use of a lug nut or wing nut<sup>[1]</sup> would clearly be a known alternative which would be well within the level of skill of one skilled in the art. While the references of record do not explicitly disclose removable fasteners in the Naito winch, the prior art taken as a whole includes knowledge which would be possessed by a person having ordinary skill in the art. At artisan familiar with complicated mechanical devices such as winches would be familiar with the use of nuts of various types for fastening components together.

We cannot sustain this rejection. Rejections based on 35 U.S.C. § 103 must rest on a factual basis. *In re Warner*, 379 F.2d 1011, 1017, 154 USPQ 173, 178 (CCPA 1967), *cert. denied*, 389 U.S. 1057 (1968). In making such a rejection, the examiner has the initial duty of supplying the requisite factual basis and may not, because of doubts that the

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<sup>1</sup>At page 9, lines 3-7, of the specification, appellant states that at least one end of each of the axles 40 of rollers 34 may be provided with wing or lug nuts for selectably detachably securing bar elements 44 to the axles.

Appeal No. 1999-1812  
Application No. 08/692,761

invention is patentable, resort to speculation, unfounded assumptions or hindsight reconstruction to supply deficiencies in the factual basis. *Id.*

In the present case, the examiner concedes (answer, page 6) that Naito does not address the use of a removable fastener for selectively detachably securing at least one of the links 8, 8A to the rollers 10, 23. In an effort to fill this gap in the evidentiary basis, the examiner states, without support, that "disassembly of parts is a well known feature for allowing . . . insertion of a rope or cable in a hoist" (answer, page 5). This is improper. *Warner, supra.* As to the examiner's observation that an ordinarily skilled artisan would be familiar with the use of various removable fasteners such as lug nuts and wing nuts for fastening things together; even if accepted, this circumstance does not suffice to establish the obviousness of the claimed subject matter as a whole, which involves the use of a particular fastener means (means for selectably detachable removal) in a particular environment (cable hoist controllers) at a particular location (the connection of the linkage means to the rollers) for a particular purpose (to facilitate placement of the cable

Appeal No. 1999-1812  
Application No. 08/692,761

between the sheave and the rollers).

We also note the examiner's positions (answer, page 7) that (1) "the prior art teaches all the features of the claimed invention," (2) "[t]here is no structural difference between the claimed invention and the teachings of the prior art taken as a whole" and (3) [t]he structures taught in the prior art are capable of performing the intended use of easy insertion of the cable at a midpoint rather than an end." In light of the above noted deficiencies in the teachings of Naito, and in that no other prior art references are relied upon by the examiner in support of the rejection, these positions are not supportable.

The decision of the examiner is reversed.

*REVERSED*

	Lawrence J. Staab	)	
	Administrative Patent Judge	)	
		)	
		)	
		)	
	Jennifer D. Bahr	)	BOARD OF
PATENT		)	
	Administrative Patent Judge	)	APPEALS AND
		)	INTERFERENCES

Appeal No. 1999-1812  
Application No. 08/692,761

Richard B. Lazarus  
Administrative Patent Judge

LJS:tdl

Appeal No. 1999-1812  
Application No. 08/692,761

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